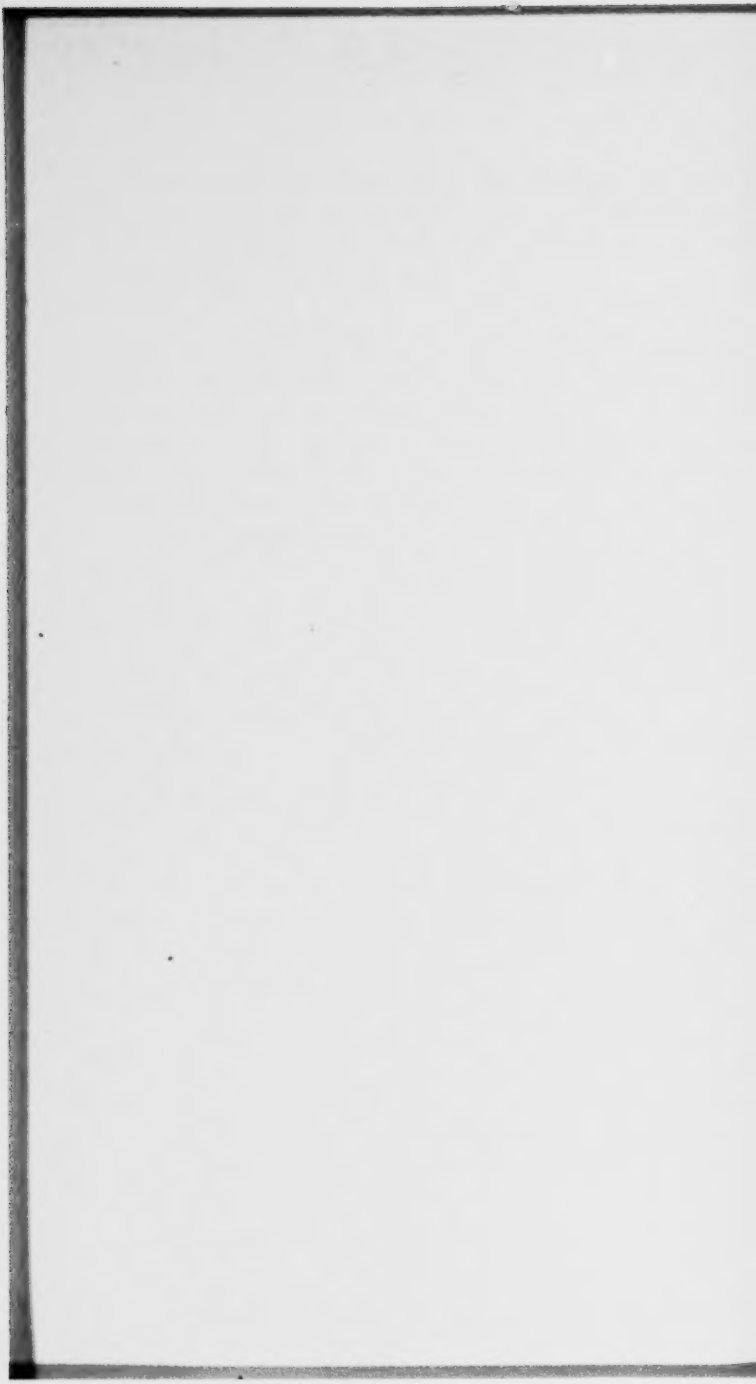

Supreme Court of the United States.

OCTOBER TERM, 1908.

STATE OF MINNESOTA,

Appellant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, as President of the Northern Securities Company and individually,

Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS.

W. R. DOUGLAS,
Attorney General.
M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

30261

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BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS.

STATEMENT OF FACTS.

The appellees in this action move a dismissal of his appeal, "for the reason that the same having been taken directly to this court is not authorized by law," and as they say "the sole question is whether, under section 5, a direct appeal can be taken from

the Circuit Court to this Court." (See pages 3 and 4 of Appellees' Brief).

This action was begun by the State in the District Court of Ramsey County, Minnesota; and the bill of complaint sets forth in full the Articles of Incorporation of the Northern Securities Company under the laws of New Jersey. (See Fol. 9, page 3a of record). Also the laws of the State of Minnesota, which are claimed to be violated by and through such corporation, and which are sought to be enforced in this action. (See Fols. 86 to 96 inclusive, pages 22a to 24a of the record).

The bill also alleges that the Northern Securities Company was organized for the express purpose of evading and violating the laws of the State of Minnesota; and that if allowed to carry out its purpose and object, full faith and credit will not be given to the public acts of this appellant; and it will be deprived of the rights guaranteed to it by the constitution of the United States. (See Fols. 97 to 102, pages 25a and 26a of the record; also Fols. 128 to 137 inclusive, pages 32a to 35a of the record).

The bill also alleges that the acts complained of were in violation of the Act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; and the appellant seeks to avail itself of this Federal statute in this suit; the appellant having alleged in its bill that it owns and maintains various charitable institutions as a state, and is a large individual shipper over the lines of railway in question, and will be deprived of rights, as such

shipper, which are secured to it by said Federal anti-trust act, unless granted the relief prayed for in its bill. (Fols. 69 to 77, pages 19 and 20a and Fols. 144 to 147, pages 36 and 37a of record).

After the bill was filed in the State Court, all of the defendants filed a petition for removal to the Federal Court. In this petition they allege:

"That this action arises under the constitution and laws of the United States and more especially under the eighth section of the first article of the constitution and the fourteenth amendment thereto, and the Act of Congress entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, and that the title and right on which the said action depends and is based, and on which a recovery by plaintiff depends, will be defeated by one construction of the Constitution or said law, and sustained by an opposite construction, in this:

That said complaint alleges a combination among the defendants for the purpose of monopolizing, and which, as is alleged, does monopolize commerce among the states of the Union, as well as within the State of Minnesota, and sets forth the provisions of a statute of said State which forbids every contract or combination in restraint of trade or commerce between any of the people of said State and any of the people of any other state or country, and which prohibits and declares unlawful any union or combination to which a corporation of said state is a party, the purposes or effect of which is to control or monopolize in any manner, the trade or com-

merce, or any part thereof, of the several states.

And the complaint alleges that the said combination and monopoly of traffic among the states have been effected by the defendants in violation of said State statute, and also in violation of said Act of Congress of July 2, 1890.

And the complaint prays that it be adjudged that the said combination and agreement and all acts done and to be done thereunder are in violation of said State statute and said Act of Congress, and that plaintiff may thereupon, and because of such adjudged violation, have the relief specially prayed and also general relief." (See Fols. 188 to 191, pages 47a and 48a of the record).

This action was thereupon, by order of court, transferred to the United States Circuit Court for the District of Minnesota. (Fol. 211, page 53a of the record).

Each of the appellees then appeared in said Circuit Court and filed their answers, and each therein made the following claim:

"They deny that the settled and public policy of the State of Minnesota has been to prohibit in any way the consolidation of competing or parallel lines of railway, and say that until the year 1874, which was long after the land grants mentioned in the bill and after the construction of a large portion of the railways of both said Great Northern and Northern Pacific companies, there was no law in Minnesota on the subject; and deny that there is or ever has been any policy or law in said state except such policy as is expressed in the statutes pleaded in paragraph X of the bill, and these statutes the defendants say are in violation of the constitution of the United States." (See Fols. 52-53, pages 63a and

64a of the record; Fols. 288-289, pages 72a and 73a of the record; also Fol. 326, page 82a of the record).

Testimony was taken and the action tried by the court, and a decree entered against the appellant, on the ground among others that the acts complained of in the bill, and as shown by the testimony, did not constitute a violation of the laws of the State of Minnesota sought to be enforced, or of the Federal statute referred to, and that appellant possessed no rights thereunder. Thereupon an appeal was taken to this court.

ARGUMENT.

The appellant being a sovereign state, there is no diversity of citizenship within the meaning of the constitution or the various judiciary acts relating to the Federal courts; therefore the jurisdiction of the Circuit Court rested solely on the ground that the suit is one which involves a dispute or controversy as to a right which depends on the construction or application of the constitution, and a law of the United States. Such being the case, an appeal can be taken only directly to this court, under section 5 of the Circuit Court of Appeals' act of March 3, 1891.

After the cause had been removed to the Circuit Court and the jurisdiction of that court became fixed for the reasons above stated, each of the appellees appeared, and in their respective answers "*claimed*" that the legislative acts of the appellant sought to be enforced are in contravention of the Constitution of the United States; so that in addition to the consti-

tutional questions and rights under Federal statutes asserted by the appellant, the appellees also *claimed* rights under the constitution of the United States, which also brings this appeal clearly within section five of said Court of Appeals act.

It seems to us that in construing the Circuit Court of Appeals act, this court has settled two things:

FIRST: THAT IN ANY CASE IN WHICH THE JURISDICTION OF THE CIRCUIT COURT RESTS SOLELY UPON THE GROUND THAT THE SUIT IS ONE WHICH INVOLVES A DISPUTE OR CONTROVERSY AS TO A RIGHT WHICH DEPENDS ON THE CONSTRUCTION OR APPLICATION OF THE CONSTITUTION, OR SOME LAW OR TREATY OF THE UNITED STATES, THE APPELLATE JURISDICTION OF THIS COURT IN RESPECT THERETO IS EXCLUSIVE.

In the case of *American Sugar Refining Company v. New Orleans*, 181 U. S. page 277, this court said:

"The intention of the act in general was that the appellate jurisdiction should be distributed, and that there should not be two appeals, but in cases where the decisions of the Courts of Appeals are not made final it is provided that 'there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy exceeds one thousand dollars besides costs.'

"And the right to two appeals would exist in every case, (the litigated matter having the requisite value) where the jurisdiction of the Circuit Court rested solely on the ground that the suit arose under the Constitution, laws or treaties of the United

States, if such cases could be carried to the Circuit Court of appeals, for their decisions would not come within the category of those made final.

"As, however, a case so arises where it appears on the record, from plaintiff's own statement, in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution, or some law, or treaty of the United States, (*Gold Washing & Water Co. v. Keyes*, 96 U. S. 199; *Blackburn v. Portland Gold Mining Co.*, 175 U. S. 571; *Western Union Telegraph Co. v. Ann Arbor Railroad Company*, 178 U. S. 239; and as those cases fall strictly within the terms of section five, the appellate jurisdiction of this court in respect to them is exclusive."

This was reaffirmed in the case of *Huguley Mfg. Co. v. Galeton Cotton Mills*, 184 U. S. page 290 in the following language:

"If the jurisdiction of the Circuit Court rests solely on the ground that the suit arises under the Constitution, laws or treaties of the United States, then the jurisdiction of this court is exclusive, but if it is placed on diverse citizenship, and also on grounds independent of that, then if carried to the Court of Appeals, the decision of that court would not be made final, and appeal or writ of error would lie. American Sugar Refining Company v. New Orleans, 181 U. S. 277."

And again in case of Union & Planters' Bank v. Memphis, 189 U. S. page 71.

SECOND: THAT IN ANY CASE WHERE THE JURISDICTION OF THE CIRCUIT COURT RESTS ON DIVERSITY OF CITIZENSHIP, AND THE CASE INVOLVES THE CONSTRUCTION OR APPLICATION OF THE CONSTITUTION OF THE UNITED STATES, OR IN WHICH THE CONSTITUTION OR LAW OF A STATE IS "CLAIMED" TO BE IN CONTRAVENTION OF THE CONSTITUTION OF THE UNITED STATES, THEN AN APPEAL MAY BE TAKEN DIRECTLY TO THIS COURT, AND IT MAKES NO DIFFERENCE WHICH OF THE PARTIES TO THE SUIT MAKES THE CLAIM THAT SUCH STATE CONSTITUTION OR LAW IS IN CONTRAVENTION OF THE CONSTITUTION OF THE UNITED STATES.

In the case of Loeb v. Columbia Township Trustees, 179 U. S. page 472, this Court said:

"By the fifth section of the Circuit Court of Appeals Act of March 3, 1891, appeals or writs of error may be prosecuted to this court from the Circuit Courts 'in any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States.' 26 Stat. 826, 827, c. 517. The petition shows that the parties are citizens of different States. It states no other ground of Federal jurisdiction. If nothing more appeared bearing upon the question of jurisdiction, then it would be held that this court was without authority to review the judgment of the Circuit Court.

Is not this court, however, sufficiently informed by the record that the defendant township, under its general demurrer, 'claimed' in the Circuit Court that the statute of Ohio by the authority of which the bonds were issued was in contravention of the Constitution of the United States?

It is said that even if the record shows such a claim to have been made it will not avail the plaintiff; for, it is argued, when the jurisdiction of the Circuit Court is invoked by the plaintiff only on the ground of diverse citizenship, a claim by the defendant of the repugnancy of a state law to the Constitution of the United States is not sufficient to give this court jurisdiction, upon writ of error, to review the final judgment of the Circuit Court sustaining such claim. Such an interpretation of the fifth section is not justified by its words. Our right of review by the express words of the statute extends to 'any case' of the kind specified in the fifth section. And the statute does not in terms exclude a case in which the Federal question therein was raised by the defendant. That section differs from section 709 of the Revised Statutes relating to the review by this Court of the final judgment of the highest court of a State in this, that under the latter section we can review the final judgment of the state court upon writ of error sued out by the party who is denied a right, privilege or immunity specially set up or claimed by him under the Constitution or laws of the United States; whereas the Circuit Court of Appeals Act does not declare that the final judgment of a Circuit Court in a case in which there was a claim of the repugnancy of a state statute to the Constitution of the United States may be reviewed here only upon writ of error sued out by the party making the claim. In other words, if a claim is made in the Circuit Court, no matter by which party, that a state enactment is invalid under the Constitution of the United States, and that claim is sustained or rejected, then it is consistent with the words of the act, and, we think, in harmony with its object, that this court review the judgment at the instance of the unsuccessful party, whether plaintiff or defendant.

It was the purpose of Congress to give opportunity to an unsuccessful litigant to come to this court directly from the Circuit Court in every case in which a claim is made that a state law is in contravention of the Constitution of the United States.

If the Circuit Court had adjudged in this case that the township's claim of unconstitutionality was without merit and had given judgment for the plaintiff, can it be doubted for a moment that the township could have brought the case here directly from the Circuit Court upon writ of error? But if the township, upon a denial of its claim, could invoke our jurisdiction, as of right, upon what principle can the plaintiff be denied the like privilege if the state law upon which his action depended was, upon his adversary's claim, stricken down as void under the Constitution of the United States? Can the case, so far as the township is concerned, be regarded as belonging to the class which the act of Congress brings directly within the cognizance of this court, and yet not be regarded as a case of that class with respect to the plaintiff? The answer to these questions has already been indicated. * * * Our jurisdiction depends only on the inquiry whether that judgment was in a case in which it was claimed that a state law was repugnant to the Constitution of the United States."

The case last quoted is not modified by any of the subsequent decisions of this court already referred to, nor by the case of *Ayers v. Polsdorfer*, 187 U. S. 585.

These conclusions are also supported by the decisions of several of the Circuit Courts of Appeal.

See *City of Owensboro v. Owensboro Water Works*, 115 Fed. Rep. 318. (Decision by the Circuit Court of Appeals for the Sixth Circuit).

Pike's Peak Company v. City of Colorado Springs, 105 Fed. Rep. page 3. (Decision by the Circuit Court of Appeals for the Eighth Circuit).

Keyser v. Lowell, 117 Fed. Rep. page 400. (Decision by the Circuit Court of Appeals for the Eighth Circuit).

Wright v. McFarlane & Co., 122 Fed. Rep. page 770. (Decision by the Circuit Court of Appeals for the Ninth Circuit).

Appellant, in its bill, asserts and relies on rights which it claims are guaranteed to it under the Constitution of the United States; and also asserts and relies on rights which it claims are given to it under a law of the United States.

The appellees *"claim"* that the laws of appellant, sought to be enforced in this action, are in contravention of the Constitution of the United States.

From the decisions of this Court it seems perfectly clear that an appeal, either *must* be taken, or *may* be taken, directly to this court from the Circuit courts in any case that involves the construction or application of the Constitution of the United States, or a law or treaty of the United States, or in any case in which the Constitution or law of a State is "claimed" by either party to be in contravention of the Constitution of the United States, regardless of the ground on which the jurisdiction of the Circuit Court may rest.

Such being the case, there is but one question left for consideration on this motion. Is it necessary that such constitutional question should be involved in the *decision* of the court, or must the court, regardless of its conclusions on the evidence, have decided that the constitution or law is, or is not, in contravention of the Constitution of the United States, in order to sustain such appeal?

Counsel for appellees say in their brief that the constitutional question must have been decided by the court adversely to the appellant, although the construction placed by the Circuit Court on the statute or constitution, or its conclusions on the evidence, rendered such decision unnecessary. The Circuit Court of Appeals act makes no such limitation; under the language of the act, the right of appeal lies to this court in any *case* that involves the construction or application of the Constitution of the United States, or in *any case* in which the constitution or law of a state is claimed by either party to be in contravention of the Constitution of the United States.

As stated by the Court in the case of Loeb vs. Columbia Township Trustees, 179 U. S. 477, Supra:

"That section differs from section 709 of the Revised Statutes relating to the review by this Court of the final judgment of the highest court of a State in this, that under the latter section we can review the final judgment of the state court upon writ of error sued out by the party who is denied a right, privilege or immunity specially set up or claimed by him under the Constitution or laws of the United States; whereas the Circuit Court of Appeals Act does not declare that the final judgment of a Circuit Court in a case in which there was a claim of the repugnancy of a state statute to the Constitution of the United States may be reviewed here only upon writ of error sued out by the party making the claim. In other words, if a claim is made in the Circuit Court, no matter by which party, that a state enactment is invalid under the Constitution of the United States, and that claim is sustained or rejected, then it is consistent with the words of the act, and, we think, in harmony with its object, that

this court review the judgment at the instance of the unsuccessful party, whether plaintiff or defendant.

It was the purpose of Congress to give opportunity to an unsuccessful litigant to come to this court directly from the Circuit Court in every case in which a claim is made that a state law is in contravention of the Constitution of the United States. * * * Our jurisdiction depends only on the inquiry whether that judgment was in a case in which it was claimed that a state law was repugnant to the Constitution of the United States."

If, in the decision of the case, the Circuit Court either declines to decide the constitutional questions involved, or to determine the rights claimed thereunder, or makes such a finding on the facts as renders it unnecessary to determine the constitutional questions, it does not deprive the party whose right is so denied, or who claims such findings to be unsupported by the testimony, of his right to appeal to this Court. If it were otherwise, the trial court would have the power to absolutely deprive a party of the right of appeal in any such case, wherever the jurisdiction of the Circuit Court rested solely upon the ground that the suit arose under the constitution, laws, or treaties of the United States.

As stated by Chief Justice Marshall in *Cohen v. Virginia*, 6 Wheaton, quoting from page 378, "A case in law or equity consists of the right of the one party as well as of the other; and may truly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either." That is, it is the

correct decision of the court, which in all cases is the final decision, that must control.

If the trial court had either correctly construed the laws of the State, sought to be enforced in this action, or made findings of fact in accordance with the evidence, then it would have been unnecessary for the court to have passed upon all of the rights claimed by appellant under the Constitution of the United States and the acts of Congress, as well as to have determined whether or not the laws sought to be enforced, are in contravention of the Constitution of the United States as claimed by appelees.

The State anti-trust act, one of the laws of the appellant sought to be enforced in this action, is almost identical in phraseology with the Federal anti-trust act sought to be enforced in the suit brought by the United States against these appellees; and upon even less testimony than the State rests its claim, the four Circuit Court Judges for the Eighth Circuit, found that the acts complained of were in violation of the Federal anti-trust law, and also amounted to an absolute consolidation of the lines of railway of the Great Northern and Northern Pacific Railway Companies; while the District Judge, sitting in the same circuit, in this action, holds that such acts are neither in violation of the Federal anti-trust act, or of the State anti-trust act, or the laws of appellant, prohibiting the consolidation of parallel and competing lines of railway; and declines to follow the decision rendered by the four Circuit Court Judges on the facts; and in effect, declines to follow the decisions of this Court in the

joint Traffic Association cases, by holding that they are not applicable.

In discussing the question of consolidation or control, as established by the facts in this case the four Circuit Court Judges for the Eighth Circuit in the Federal case said:

"It will not do to say that, so long as each railroad company has its own board of directors, they operate independently, and are not controlled by the owner of the majority of their stock. It is the common experience of mankind that the acts of corporations are dictated and that their policy is controlled by those who own the majority of their stock. Indeed, one of the favorite methods in these days, and about the only method, of obtaining control of a corporation, is to purchase the greater part of its stock. It was the method pursued by the Northern Pacific and Great Northern Companies to obtain control of the Chicago, Burlington & Quincy Railroad; and, so long as directors are chosen by stockholders, the latter will necessarily dominate the former, and in a real sense determine all important corporate acts.

The fact that the ownership of a majority of the capital stock of a corporation gives one the mastery and control of the corporation was distinctly recognized and declared in Pearsall v. Great Northern Railway, 161 U. S. 646, 671, 16 Sup. Ct. 705, 710, 40 L. Ed. 838. The same fact has been recognized and declared by other courts. Pennsylvania R. Co. v. Commonwealth (Pa.) 7 Atl. 368, 371; Farmers' Loan § Trust Co. v. New York & Northern Railway Co., 150 N. Y. 410, 425, 44 N. E. 1043, 34 L. R. A. 76; People ex rel vs. Chicago Gas Trust Co., 130 Ill. 268, 22 N E. 798, 802, 8 L. R. A. 497, 17 Am. St. Rep. 319. In opposition to this view counsel cite Pullman Car Co. v. Missouri Pacific Co., 115 U. S. 587, 596, 6 Sup. Ct. 194, 29 L. Ed. 499, but in that case the meaning of the word 'controlled' as used in a private contract, was the point under consideration, and what was said on the subject cannot be held

applicable to cases arising under the anti-trust act, when the point involved is whether the ownership of all of the stock of the two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads. We entertain no doubt that it does. Indeed, we regard the suppression of competition, and to that extent a restraint of commerce, as the natural and inevitable result of such ownership.

What has been done through the organization of the Securities Company accomplishes the object which Congress has denounced as illegal more effectually, perhaps, than such a combination as is last supposed. That is to say, by what has been done the power has been acquired (and provision made for maintaining it) to suppress competition between two interestate carriers who own and operate competing and parallel lines of railroad. Competition, we think, would not be more effectually restrained than it now is under and by force of the existing arrangement if the two railroad companies were consolidated under a single charter."

See *United States v. Northern Securities Company*, et al., 120 Federal Reporter, page 721.

That decision was rendered prior to the one by Judge Lochren involved in this appeal; but the latter judge holds that there is no consolidation or control, in violation of either the Federal or State anti-trust acts, or the State laws against consolidation of parallel and competing lines of railway. (See Fols. 411 and 500, pages 103a to 126a of the record).

We refer to the decision in the Federal case, only for the purpose of showing that our contention, that the District Judge who decided this case did not construe the laws of appellant correctly, or make findings in accordance with the testimony, is not without foundation.

Should this Court construe the laws in question, or find the facts in accordance with appellant's contention, and as decided in the Federal case, then all of the constitutional rights claimed by the appellant, as well as its rights under the Federal anti-trust act; and the claim made by the appellees as to the unconstitutionality of the laws sought to be enforced, will be before this court for determination.

Counsel for appellees assert that one of the constitutional rights claimed by the appellant can have nothing to do with this case. It is not proper, nor do we intend, on this motion, to enter into any discussion of the merits of this case. But in view of the assertion above referred to, we make this sugestion. One of the claims made by appellant in its bill of complaint is, that the Northern Securities Company was organized for the purpose of violating the laws of appellant, and is now being used as a device or scheme to evade and violate the laws of the State of Minnesota; and if allowed to continue, this appellant will be denied the right guaranteed to it under Article IV of the Constitution of the United States. That corporation in turn claims that by reason of the rights conferred on it by the laws of New Jersey, it has full corporate power and authority to purchase and own all of the capital stock of the Great Northern and Northern Pacific Railway Companies, and to exercise all the powers and rights of such ownership, notwithstanding the laws of appellant. Supposing that the state of New Jersey by special act of its legislative body had created a corporation, the avow-

ed purpose and object of which, as shown by its grant of power from the State of New Jersey, was to consolidate the Great Northern and Northern Pacific Railway Companies in violation of the laws of the State of Minnesota; would such a grant be of any force or effect as against the rights of the State of Minnesota under Article IV of the Constitution of the United States, which declares that full faith and credit shall be given in each state to the public acts of every other state? If the State of New Jersey is powerless to give any such right or authority under such an act as against the State of Minnesota, can any corporation organized under the general laws of the State of New Jersey thus acquire an authority or power which the State of New Jersey could not itself confer?

The Court in the case of *United States v. Northern Securities Company, et al., supra,* held that if the State of New Jersey had undertaken to invest the incorporators of the Northern Securities Company with the power to do acts which are prohibited by Congress, acting under constitutional authority, such a grant would have been void; and that the Federal anti-trust act rendered void, or at least prevented the exercise of any power acquired under the laws of New Jersey, which is in violation of its provisions.

This is one of the claims asserted by the appellant against the Northern Securities Company in this case, in addition to its claim that no corporation can acquire any right or power under the laws of New Jersey to violate the laws of the State of Minnesota

in so far as they relate to property within the state of Minnesota.

We make these suggestions as to some of the claims, only for the purpose of showing that constitutional questions are involved, and will arise, in case this Court finds the facts to be established as we claim the evidence shows them to be, notwithstanding the assertions of counsel for appellees.

The constitutionality of the laws sought to be enforced by appellant in this action have never been determined by this Court. The State anti-trust act, one of the laws in question, was not enacted until five years after the case of *Pearsall v. The Great Northern Railway Company* was decided by this Court; and the constitutionality of this or any similar state legislation has never been before this Court for determination.

One of the most important questions to be determined on this appeal is, to what extent, under the commerce clause of the constitution, can a state regulate and control corporations created by it, which are engaged in interstate commerce?

That this constitutional question is involved and is a very important one in this case is shown by the fact that counsel for both sides in the Federal as well as the State case against these appellees, devoted days to its discussion before the Court.

The appellees having removed the case from the State to the Federal Court, on the ground that the cause of action arose under the Constitution and laws of the United States, and then asserted in their answers that the laws in question are in contravention of the constitution, are now estopped from claiming that no such constitutional questions, or laws, or claims thereunder are involved. As stated by this Court in *Cowley v. Northern Pacific Railway Company,* 159 U. S., quoting from page 583:

"The case having been removed to the Circuit Court upon the petition of defendant, it does not lie in its mouth to claim that such Court had no jurisdiction of the case, unless the Court from which it was removed had no jurisdiction."

See also, *Ayers v. Watson,* 113 U. S. 595.

Mastin v. C. R. I. & P. Ry. Co., 123 Fed. Rep. 827.

Woodcock v. B. & O. Ry., 107 Fed. Rep. 767.

Aside from statutory requirements, there are two reasons why this Court should hold jurisdiction on appeal in this case, unless the acts of Congress clearly prevent it from so doing.

First: The judge who tried this case placed great stress on the language used by this Court in the case of *Pearsall v. the Great Northern Railway Company,* 161 U. S. page 646, wherein this Court, *by way of illustration only,* used the following language:

"Doubtless these stockholders (that is, Great Northern stockholders) could lawfully acquire by

individual purchases a majority or even the whole of the stock of the re-organized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interest as such in common." (See Fols. 481, 487, pages 221a and 222a of the record, where the lower court quotes the above language.)

It thus becomes necessary for this court to decide and determine just how far the language used in the Pearsall case is applicable to this case; and whether or not that language authorizes or protects such a plan and device to evade the laws of appellant as the evidence clearly shows was intended by the organizers and incorporators of the Northern Securities Company.

Second: This case must ultimately come to this court for final determination. There are great public questions involved in the case, and it is highly important that the State of Minnesota should know as speedily as possible what its rights are under the laws sought to be enforced in this action, that it may be able to protect itself and the rights of its citizens by such subsequent legislation or action as may be necessary for it to adopt.

The decision in this case on this appeal will determine the rights of all the other states through which the lines of appellees pass, and one of which has begun action in this court and in which the evidence has not yet been taken but which it awaiting the decision of this case.

The action of the United States against these appellees will necessarily determine the rights of the

National Government as against these appellees; and the State of Minnesota should have its rights determined at or about the same time, so that no conflict may exist between the two sovereignties in relation to these appellees.

We respectfully submit that this motion should be denied.

W. B. DOUGLAS,
Attorney General.
M. D. MUNN,
GEO. P. WILSON,
Of Counsel.